



**Ninety-Ninth Legislature - First Session - 2005**  
**Committee Statement**  
**LB 713**

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**Hearing Date:** March 9, 2005

**Committee On:** Judiciary

**Introducer(s):** (Thompson, Flood)

**Title:** Change provisions relating to evidentiary procedure, statutes of limitations, and reporting requirements relating to sexual assault

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**Roll Call Vote – Final Committee Action:**

Advanced to General File

X Advanced to General File with Amendments

Indefinitely Postponed

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**Vote Results:**

7	Yes	Senators Aguilar, Bourne, Combs, Flood, Foley, Friend, Pedersen
	No	
	Present, not voting	
1	Absent	Senator Chambers

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**Proponents:**

Senator Nancy Thompson  
Don Kleine  
Marla Sohl

Jennifer Schweer  
Brian Elliott MD  
Brad Muerrens

**Representing:**

Introducer  
Nebraska Attorney General  
Nebraska Domestic Violence Sexual Assault  
Coalition  
Rape/Spouse Abuse Crisis Center  
Sexual Assault Task Force  
Nebraska Advocacy Services

**Opponents:**

**Representing:**

**Neutral:**

**Representing:**

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**Summary of purpose and/or changes:**

LB 713 proposes the following changes relating to the crime of sexual assault and the victims of such crimes:

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- Amend the Nebraska rules of evidence to allow, in a prosecution for sexual assault or sexual assault of a child, the admission of evidence of a defendant's commission of another offense or offenses of sexual assault. A prosecutor is required to give notice of any expected testimony and witnesses at least 15 days prior to trial;
- Require the use of a standardized sexual assault evidence collection kit by health care professionals statewide;
- Allow health care professionals to collect forensic evidence with the consent of a sexual assault victim without prior authorization by law enforcement;
- Amend Nebraska's mandatory reporting law to prohibit the reporting of the name of a sexual assault victim without consent if the victim is 18 years of age or older and not a vulnerable or protected individual;
- Require the anonymous reporting of sexual assault information and submission of forensic evidence to law enforcement by health care professionals if a victim refuses to consent to the release of his or her name. Forensic evidence submitted is required to be maintained for at least three years.
- Amend the criminal statute of limitations to allow for the prosecution of persons identified after the three year statute of limitations has run by DNA which was collected prior to the expiration of the statute of limitations. The prosecution of any person identified via DNA evidence after the statute of limitations has run must occur within 1 year of such identification.

**Explanation of amendments, if any:**

The committee amendment to LB 713 amends the bill and also incorporates the following bills related to Sexual Assault or domestic violence: LB 123, LB 535 and LB 633.

**LB 713**

The committee amendment makes the following changes to LB 713:

- Strikes sections 1&2 which amended the Nebraska Rules of Evidence to allow the introduction of evidence of prior sexual assaults in prosecutions for sexual assault.
- Strikes section 4 of the bill providing for anonymous reporting of sexual assault by medical professionals if the victim does not consent to the release of his or her name.
- Strikes the language in section 5 which tolled the statute of limitations in criminal cases if DNA evidence discovered prior to expiration of the limitations period leads to the identification of a suspect after the statute of limitations has run and

instead eliminates the statute of limitations for the crimes of first and second degree sexual assault.

- Removes the term “first aid station” from section 3 relating to the use of standardized evidence collection kits in sexual assault cases.

## **LB 123**

LB 123 proposes to amend Nebraska statutes regarding sex offender registration and the legal effect of a court order to set aside a conviction.

The bill provides that a court order to set aside a conviction shall not preclude proof of the conviction whenever the fact of conviction is relevant to a determination of a sex offender’s risk of recidivism or relieve a person convicted of a crime requiring registration under the sex offender registry act from complying with the terms of the act. The bill also amends the sex offender registration act to clarify that an offender convicted of a crime requiring registration who has the conviction set aside or nullified is still required to register unless the offender has been granted a pardon.

The bill adds a provision requiring persons registered under the sex offender registration act to notify the sheriff of the county in which they are located within five days if the person does not have a residence or is not temporarily domiciled, and to update the sheriff at least every thirty days while such person remains without a residence.

Lastly, the bill expands purposes for which information collected under the sex offender registration act may be disclosed. Currently, the law allows information to be disclosed to government agencies other than law enforcement only for the purpose of conducting background checks for employment purposes. LB 123 expands this language to allow information to be disclosed to governmental agencies for public safety purposes, and directs the Nebraska State Patrol to develop rules and regulations governing the release of such information.

### Committee Amendment

The committee amendment makes three changes to the bill as introduced.

1. The amendment strikes the section of the bill requiring homeless sex offenders to inform the sheriff within five days of becoming homeless and every thirty days thereafter if they remain homeless.
2. The amendment adds health care facilities providing services to children or vulnerable adults to the list of entities (including schools & day care facilities) to which the state patrol is required to distribute the list of level II registered sex offenders, defined as those offenders with a moderate risk of recidivism.
3. The bill strikes the proposed language allowing the state patrol to share confidential information on sex offenders with other state agencies for any “public safety purpose”

and instead expands the purposes for which sharing of this information is allowed to include background checks of volunteers.

## **LB 535**

LB 535 proposes several changes to the criminal offenses of third degree assault and third degree domestic assault.

An enhanced penalty of a class IV felony is provided for third degree assault if the defendant has a previous conviction for third degree assault within the previous twelve years, and removes the requirement that the offense be against the same victim before a second conviction for domestic assault can be enhanced. Currently, third degree assault is penalized as a Class I misdemeanor.

LB 535 also redefines the elements of third degree domestic assault to harmonize it with the language found in the third degree assault statute. Third degree domestic assault is currently defined as intentionally or knowingly causing bodily injury to one's intimate partner or placing, by physical menace, one's intimate partner in fear of imminent bodily injury. LB 535 amends this language so that it mimics the current definition third degree assault. Recklessly is added as an allowable mental state, and the entire prong of the offense regarding placing one in fear of imminent harm by physical menace is stricken and replaced with the language used in the third degree assault statute, "Threatens his or her intimate partner in a menacing manner."

Lastly, LB 535 requires a court to indicate the reasons in the court record prior to dismissing charges of domestic assault on its own motion or at the request of the prosecution, and prohibits a court from dismissing a domestic assault charge for the sole reason that a civil compromise or settlement has been reached.

### Committee Amendment

The committee amendment makes the following changes to LB 535:

- Strikes section 1 of the bill which enhanced the penalty for third degree assault from a class 1 misdemeanor to a class IV felony for a second offense within twelve years.
- Strikes the addition of recklessly as a culpable mental state for the crime of domestic assault in the second or third degree.
- Strikes the proposed change to the elements of third degree domestic assault and adds "or verbal" to the existing elements for the crime so that verbal threats can be prosecuted under the statute.
- Strikes the change to allow sentence enhancement for a second conviction of domestic assault against any victim rather than only for repeat assaults against the same victim.

- Strikes the provision prohibiting a court from dismissing a charge of domestic assault because the parties have reached a civil compromise or settlement.

## **LB 633**

Legislative Bill 633 would allow the court to order the following relief in a protection order:

- to seek protection from a third party acting under the respondent's direction;
- to order the respondent to stay a minimum of 100 yards or more away from the petitioner;
- allow for the court to award the petitioner temporary custody of any minor children up to 120 days;
- award any other relief deemed necessary for the safety and welfare of the petitioner or the petitioner's children;
- award temporary possession to the petitioner of any animal or household pet;
- If a protection order issued includes a requirement that the respondent refrain from entering a residence or coming within a court-ordered distance of the petitioner, the order cannot be waived or nullified if the petitioner or other family member invites the respondent to the residence or within the court-ordered boundary. The petitioner shall not be charged with a violation of the protection order;
- The court can fix the court order for longer than one year; and
- Clarifies that any person other than the petitioner who knowingly violates a protection order is guilty of a Class 2 misdemeanor.

With regard to child custody, visitation or support, a respondent may be awarded visitation of the children during the same length of time that custody is awarded to the petitioner. However, the court can restrict or deny the respondent's visitation if the court finds that the respondent has done or is likely to do any of the following:

- Abuse or endanger the children
- Use visitation to abuse or harass the petitioner
- Improperly conceal or detain the minor

If the court grants visitation, the order shall specify dates and times for the visitation and an appropriate setting to exchange the children. The respondent may be ordered to pay temporary child support or restitution for the petitioner's loss of earnings and out-of-pocket expenses. The court may order the respondent to pay restitution to any public or private agency for the cost of providing services to the petitioner.

The court may issue, after notice and opportunity for hearing and a finding that the respondent represents a credible threat to the physical safety of the petitioner, an order that the respondent shall not own, possess, purchase, or receive a firearm and shall surrender any firearm certificate procured while a protection order is in effect;

Within 24 hours after issuance of the court order, the respondent shall remove any firearms in his or her immediate possession or control. If the respondent is not at the hearing, the respondent shall remove any such firearms within 48 hours of receiving notice of the court order.

The respondent must file an affidavit with the court that the firearms have been stored or sold. A violation of this provision is a Class 2 misdemeanor. All forms requesting a protection order shall contain such firearm language.

A law enforcement agency may store the firearms and may charge the respondent a fee for storage. There shall also be firearm language in a protection order prohibiting the respondent from owning, possessing, purchasing, or receiving a firearm while the protection order is in effect. The respondent must prove that any firearms were sold or removed from his or her possession within 72 hours after receipt of the order.

A court can issue an ex parte protection order when a peace officer, with consent of the victim, asserts reasonable grounds to believe that the victim is in fear of danger of abuse or that a minor child is in immediate danger. The order will last 5 days and expires on the close of business on the fifth judicial day following the day of issuance.

Under LB 633, the clerk of the court is required to display the protection order petition and affidavit forms in English and Spanish in plain view and display legal advocacy and related service information.

Any ex parte protection order that is denied shall state the specific grounds for the denial of relief. If a petition is granted, the petitioner can request the court to set a hearing date within 14 days after service of the order upon the respondent.

A peace officer may personally serve any protection order issued and the officer may detain a responded for a reasonable period to serve the order. The officer shall file a return receipt with the clerk of court that issued the protection order within seven days after issuance.

The bill also provides that a person over eighteen, not a party to an action, may serve the order. That same person must file a notarized affidavit with the clerk of the court that the order was served and be present at the hearing to provide testimony regarding the service.

Police officers shall receive not less than four hours per year of education and training in the area of domestic abuse.

LB633 also contains provisions relating to pretrial release when a person is arrested for or charged with domestic assault. The court shall determine if the defendant is a threat to the petitioner and if so, the court may impose some limitations on pretrial release.

### COMMITTEE AMENDMENT

The committee amendment to LB 633 makes the following changes:

- Strikes original sections 1 and 13;
- Strikes language pertaining to a third party acting under the respondent's direction;
- Requires a respondent to stay a specified distance from the petitioner as determined by the court;

- Strikes all language pertaining to temporary child support, visitation, and restitution;
- Strikes all provisions relating to firearms;
- Clarifies that the petitioner shall not be charged with aiding and abetting a violation of the petitioner's protection order unless the court finds the petitioner invited the respondent to the residence or other specified place that the respondent was prohibited from entering with the intent to have the respondent arrested for violation of a protection order;
- Strikes language that allows a court to extend a protection order beyond one year;
- Strikes language that a protection order may only be modified by an order of the court and at the request of the petitioner;
- Clarifies that a peace officer shall file his or her return of service of process for a protection order with the clerk of court to harmonize with other statutes pertaining to service of process;
- Provides that every law enforcement officer shall receive two hours of training per year on the problems of domestic abuse.; and
- Renumbers sections and corrects internal references accordingly.

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**Senator Patrick J. Bourne, Chairperson**